

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ELIAS ILYIA,

Plaintiff,

v.

MAROUN N. EL KHOURY, *et al.*,

Defendants.

No. C11-1593RSL

ORDER DENYING PLAINTIFF'S
MOTION TO PRECLUDE FURTHER
TESTIMONY FROM DR. HARRIS

This matter comes before the Court on "Plaintiff's Motion to Preclude Further Testimony of Dr. G. Christian Harris, M.D." Dkt. # 213. Having reviewed the memoranda, declaration, and exhibits submitted by the parties, the Court finds as follows:

The fact that the parties videotaped Dr. Harris' deposition when they were concerned that his ill health would prevent him from testifying at trial in no way precludes his live testimony now that it appears that he will be available. See Kuryakyn Holdings, Inc. v. Just in Time Distribution Co., 2013 WL 6000893 at *2 (W.D Wis. Nov. 12, 2013) (rejecting argument that witness should be excluded because allowing him "to testify live at trial would constitute a 'do-over,' with the benefit of seeing plaintiff's cross-examination and the rulings from the court."). The Court, and the judiciary as a whole, has a strong preference for hearing from witnesses live whenever possible. See Fed. R. Civ. P. 43(a) ("At trial, the witnesses' testimony must be taken in open court unless a federal statute, the Federal Rules of Evidence,

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1 these rules, or other rules adopted by the Supreme Court provide otherwise.”). Plaintiff has not
2 overcome that preference. His claim that videotaping the deposition caused inconvenience and
3 expense is not supported by any evidence. The only other justification plaintiff offers for
4 excluding a witness who appears ready and able to testify is that, if Dr. Harris were to change his
5 story on the stand, plaintiff would have to review both the deposition transcript and the video in
6 order to locate impeachment material. The practical difficulties of trial are legion: this small
7 challenge does not warrant the rejection of a live witness in favor of his videotaped deposition.

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9 For all of the foregoing reasons, plaintiff’s motion to preclude Dr. Harris from
10 testifying live at trial (Dkt. # 213) is DENIED.

11 Dated this 28th day of April, 2014.

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14 Robert S. Lasnik

15 United States District Judge
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